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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1226

DAMIAN GARCIA MERCADO, *Petitioner*,

v.

SUPERIOR COURT OF PUERTO RICO and ALCOA STEAMSHIP CO., INC., *Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of Puerto Rico

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BRIEF FOR RESPONDENT, SUPERIOR COURT OF PUERTO RICO IN OPPOSITION

OPINIONS BELOW

The Per Curiam Opinion and Judgment of the Supreme Court of Puerto Rico are set out as Appendix B to the Petition. The Order of the Superior Court of Puerto Rico, San Juan Part, is printed as Appendix A to the Petition.

JURISDICTION

The jurisdictional requisites under 28 U.S.C. § 1258 and Rule 19(1)(a) of the Rules of this Court are not met by this Petition.

QUESTION

Whether the Courts of Puerto Rico, which have no provision for trial by jury in civil actions, are required to provide trial by jury in a suit brought under the provisions of the Jones Act, 46 U.S.C. § 688.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent Constitutional and statutory provisions are set forth in the Petition at pp. 3-6.

STATEMENT

Petitioner, a seaman, was injured on the high seas off the United States coastline near New Orleans, Louisiana, while working on board the *S.S. Alcoa*. On May 13, 1965 he filed a complaint in the Superior Court of Puerto Rico, San Juan Part, Civil No. 65-2085, in which he claimed rights and benefits under the Jones Act, 46 U.S.C. § 688, (A translated copy of the complaint is at Appendix C to the Petition). Respondent Alcoa filed a Motion to Dismiss the Complaint alleging that "under the provisions of 46 U.S.C.A. § 688 jurisdiction shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Therefore, "the courts with competence in this case are those of the State of New York." The petitioner filed an Opposition to the Motion to Dismiss the Complaint on June 3, 1965. The court rejected the Motion

to Dismiss on June 11, 1965. On January 27, 1966, Alcoa answered the complaint (Appendix D to Petition). Thereupon, on February 1, 1966, petitioner filed a motion entitled, "Motion for Trial Setting and for Assignment to a Courtroom Having Facilities for Jurors" (Appendix E to Petition). After hearing on the motion, the Superior Court on March 4, 1966 denied petitioner's request (Appendix A to Petition).

To review that denial, a petition for a writ of certiorari was filed in the Supreme Court of Puerto Rico on May 4, 1966, and on May 10, 1966 the Writ of Certiorari was issued. The Solicitor General of the Commonwealth of Puerto Rico intervened and, together with Alcoa Steamship Co., opposed petitioner's request for a trial by jury. After extensive memoranda of law and oral argument, the Supreme Court of Puerto Rico rendered a Per Curiam Opinion on October 14, 1970, affirming the decision of the Superior Court, San Juan Part (Appendix B to the Petition).

ARGUMENT

The question in the present case raises no federal issues of substance not previously determined by this Court, and in fact the decision below is precisely in accord with applicable decisions of this Court. The Supreme Court of Puerto Rico in affirming the Superior Court's denial of Petitioner's motion requesting that this civil action be heard before a jury, reached no federal question of any magnitude. Instead, it merely applied the long standing legal relationship between the United States and the Commonwealth of Puerto Rico set up by Congress and interpreted by this Court in a long line of cases. Rule 19(1)(a) of

this Court grants a review on writ of certiorari "where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court." Respondent intends to show that the non-availability of jury trials in civil actions in the courts of the Commonwealth of Puerto Rico, and hence the non-availability of jury trial in Jones Act cases brought in those courts, does not reach the level of a substantial federal question. Arguendo, if this Court determines that it is or may be a federal question of substance, the decision of the Supreme Court of Puerto Rico follows precedent set by this Court and is "in accord with applicable decisions of this court."

I.

JURISDICTION IS NOT PROPERLY FOUND IN CERTIORARI AS THERE HAS BEEN NO STATE COURT DECISION ON A "FEDERAL QUESTION OF SUBSTANCE NOT THERETOFORE DETERMINED BY THIS COURT," AS REQUIRED BY RULE 19 (1)(a) OF THE RULES OF THIS COURT

The present legal relationship of Puerto Rico to the United States is the result of various constitutional provisions and federal laws and their applicability to Puerto Rico. Since the enactment of 28 U.S.C. § 1258 in 1961, this Court reviews the decisions of the Supreme Court of Puerto Rico in the same fashion as decisions of the highest court of a state. Hence, Rule 19 of the Rules of this Court, governing jurisdiction on writ of certiorari, applies to Puerto Rico. That Rule says in part:

1. A review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicates the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this Court.

In the instant case, Petitioner asked this Court to review a decision of the Supreme Court of Puerto Rico, upholding a lower court decision, finding the right to trial by jury accorded under the Jones Act, 46 U.S.C. § 688, locally inapplicable to Puerto Rico. In so holding, it never reached "a federal question of substance" and relied heavily on "applicable decisions of this court" which have settled the relationship of federal laws to Puerto Rico.

It is not the intention of Respondent to repeat the discussion of the lack of a federal question of substance so amply laid out in the opinion by the Supreme Court of Puerto Rico. *See*, pp. 21-24 of Appendix to Petition. Rather, the Respondent wishes to urge on this Court the record which so amply shows the decisions below were based on the Civil Code of Puerto Rico, long recognized and respected by this Court, and did not deny any Constitutional right to the Petitioner, thus not reaching a federal question.

In passing the Jones Act of 1920, Congress gave the merchant seamen a right comparable to that enjoyed by other litigants in damages in the United States, that is, the right to hear their claim for damages before a jury. In Puerto Rico, the Civil Code is in effect. This dates back to the initial coloniza-

tion of the island by Spain. As part of this Code, all actions for damages including negligence are brought before a judge without a jury. There are no provisions either in the Constitution of Puerto Rico or in Puerto Rican law providing for a trial by jury in civil actions. Judiciary Act of Puerto Rico, Act No. 11 of July 24, 1952, 4 L.P.R.A. § 121 & § 181; Rule 43.1 of the Rules of Civil Procedure of Puerto Rico, 32 L.P.R.A. App. II (9 L.P.R.A. p. 191, 1969 ed.). It is important to point out that the federal court system exists in Puerto Rico and Petitioner might well have brought his action there and had his civil suit before a jury. This Court has frequently stated that the trial by jury in civil cases is a fundamental feature in the *federal system of jurisprudence*. *Jacob* v. *New York City*, 315 U.S. 752 (1943) [emphasis supplied]. The conclusions reached by the Supreme Court of Puerto Rico are entitled to great respect on review of its judgment by this Court. This Court, if it so chooses, will analyze the facts in order that the appropriate enforcement of a federal right may be assured. *See*, *Whitus* v. *Georgia*, 385 U.S. 545 (1966). As pointed out previously, the Petitioner could have brought his action in the federal court system in Puerto Rico and he would have had his trial by jury which is a fundamental feature of that system.

The question whether a state code is valid under the state constitution is ultimately for the state courts to decide, and this Court has long respected decisions by the state courts in these matters. *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1950). In the instant case, the Civil Code is valid under the state constitution and its provisions have long been upheld by this Court. *See*, *Bonet* v. *Texas Company, Inc.*,

308 U.S. 433 (1940); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922).

Petitioner at no time has sustained his allegation that the statutory right under the Jones Act rises to the level of the Federal Constitutionally guaranteed right to jury trial under the Seventh Amendment. There has been no denial by the courts of Puerto Rico of any constitutional right. The state court's construction of a federal statute should not be reviewed where judgment rests, as it did here, on a non-federal ground, that is, that the Civil Code of Puerto Rico, incorporated in the Commonwealth's Constitution and approved by Congress, does not provide for jury trials in civil matters. This non-federal ground is clearly adequate to the question. *See, Kalb* v. *Feuerstein*, 308 U.S. 433 (1940). The Supreme Court of Puerto Rico adequately considered Petitioner's Constitutional allegations:

> Discussing this question, Professor Moore, after explaining that the seaman may put forward his claims in the federal courts in common law or in admiralty having the right of jury trial in the first case but not in the second, states that the seaman may also sue under the Jones Act in the state courts. In this last assumption, Moore explains, "The seaman may, then, put forward his entire claim in a state action and enjoy a jury trial on all the issues, *provided, of course, the state practice gives a jury trial on legal issues of this character.*" 5 Moore's Federal Practice, § 38.35[4], 2d ed. (1969) p. 282. [Italics ours]. (See p. 21 of Appendix to Petition).

As previously indicated, it is essential to jurisdiction of this Court that in a petition for certiorari from a state court judgment upholding a state right there

be an explicit and timely insistence in the state court, not properly handled by that court, that the state right is repugnant to the Federal Constitution. *Wilson v. Cook*, 327 U.S. 474 (1946). The court below fully discussed the relationship of Puerto Rico and its Civil Code to the Federal Constitution.

II.

THE DECISION BELOW IS CLEARLY CORRECT AND FOLLOWS THIS COURT'S INTERPRETATION OF THE RELATIONSHIP BETWEEN PUERTO RICO AND THE UNITED STATES

As this Court said in a recent decision in *Fornaris v. The Ridge Tool Co.*, No. 841, Oct. Term, 1970 (Decided November 23, 1970), "the relations of the federal courts to Puerto Rico have often raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish tradition. Federal courts, reversing Puerto Rican courts, were inclined to construe Puerto Rican laws in the Anglo-Saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this Court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably wrong'. See, *Bonet v. Texas Co.*, 368 U.S. 463, 471."

The present legal relationship of Puerto Rico to the United States is the result of the applicability of various constitutional provisions and federal laws to Puerto Rico. This Court has seen fit to defer, whenever possible, to the Commonwealth with its set of laws still "impregnated with the Spanish tradition". The Fifth Amendment requirement of indictment by grand jury and the Sixth Amendment requirement of trial by jury has specifically been held not to apply

to Puerto Rico. *Porto Rico* v. *Rosaly*, 245 U.S. 639 (1918); *Balzac* v. *Porto Rico*, 258 U.S. 298 (1922). In addition, the uniformity provision in Article I, Section 8 has been held not applicable. *Downes* v. *Bidwell*, 182 U.S. 244 (1901). The Sixth Amendment right to confrontation of witnesses, the Seventh Amendment right of trial by jury in common law cases, and, probably, the Fifth Amendment right against double jeopardy and the First Amendment protection against bills of attainder or ex post facto laws are not applicable to Puerto Rico. *See, Dorr* v. *U. S.*, 221 U.S. 325 (1911); *Puerto Rico* v. *Shell Co. (P. R.), Ltd. et al.*, 302 U.S. 253 (1937); *Grafton* v. *U. S.*, 206 U.S. 333 (1907); *Downes* v. *Bidwell*, *supra*. The constitutional restrictions upon a state of the union with respect to the regulation of interstate and foreign commerce and prohibition upon the levying of duties or imports were held not to apply to Puerto Rico. *Buscaglia* v. *Ballester*, 162 F.2d 805 (CA 1, 1947); cert. den. 332 U.S. 816 (1947). Due Process is the only constitutional requirement specifically held to be applicable to Puerto Rico, although whether it is the Fifth or Fourteenth Amendment is not clear. *Mora* v. *Mejias*, 206 F.2d 377 (CA 1, 1953).

In 1950, Congress passed Public Law 600, The Puerto Rican Federal Relations Act, 48 U.S.C. § 734, through which the Puerto Rican Constitution and Commonwealth Government were established. Section 9 of that Act between the United States and Puerto Rico provides that:

> The statutory laws of the United States *not locally inapplicable*, except as herein before or herein after otherwise provided, shall have the same force and effect in Puerto Rico as in the United States . . . [emphasis added].

The federal court system, and this Court in particular, has relied on this Section in considering the applicability of Federal Constitutional provisions and statutes to the Commonwealth of Puerto Rico. See cases cited *supra*.

Section 8 of this Act, placing the territorial waters of Puerto Rico under control of the Government of Puerto Rico, reiterates:

> All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce except so far as the same may be *locally inapplicable*, shall apply to said island and waters and to its adjacent islands and waters. [emphasis added].

Relying on this locally inapplicable language, the provisions of the Jones Act have been held to be supplanted by the Puerto Rican Workmen's Compensation Act by the First Circuit in *Fonseca* v. *Pesa*, 282 F.2d 153; cert. den. 365 U.S. 880 (1960). *Fonseca* was an action in which appellants were seamen and members of cruiser vessels, who were injured while at work on their respective vessels when afloat on navigable waters within the territorial limits of the Commonwealth of Puerto Rico. Their employers had insured their employees under the Puerto Rico Workmen's Compensation Act. Each appellant brought suit in the United States District Court for Puerto Rico against his employer to recover under the Jones Act. The United States District Court entered summary judgment for the respondent on the ground that the seamen's only remedy against their employers was afforded by the local Workmen's Compensation Act. The First Circuit stated that the present status of

the Commonwealth of Puerto Rico is not that of a state of the union nor even that of a territory incorporated to the union preparatory to statehood. As such, the Government of Puerto Rico has such powers as Congress from time to time has seen fit to give it. The Court stated that Congress conferred full power of control over local, navigable waters upon the Government of Puerto Rico to the complete exclusion of the admiralty and maritime law of the United States. It went on to conclude that neither the Jones Act, nor the General Maritime Law of Unseaworthiness, are inherently inapplicable to Puerto Rico, but that, on the other hand, there is nothing in the Jones Act specifically making its provisions applicable in the territorial waters of Puerto Rico and that the Court was not aware that Congress had ever taken action to make the General Maritime Law of Unseaworthiness apply in these waters. Instead, Congress, in a valid exercise of powers conferred upon it by the Constitution, gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the General Maritime Law, and the Legislature of Puerto Rico had exercised such power in passing the Workmen's Compensation Act. *See also, Colon-Nunez* v. *Hoyo-Linie*, 423 F.2d 932 (1970); *Lopez-Correa* v. *Marine Navigation Co.*, 289 F. Supp. 993 (1968).

If, under Section 8, the courts find that the entire Jones Act is locally inapplicable because Puerto Rico, in a valid exercise of its power, supplanted it by the passage of the Workmen's Compensation Act, then it is clear that under the general provision of Section 9 it is a valid exercise of the special powers granted to Puerto Rico to provide that suits in civil cases should be tried by judge only, and that any provision

of federal law that provides for trial of civil issues by jury is locally inapplicable unless Congress specifically provides otherwise. In *Alcoa Steamship v. Perez Rodrigues*, 378 F.2d 35 (1967), the First Circuit said:

> Moreover, particularly in view of the unique status of Puerto Rico, we think that if and when Congress deems it advisable to extend law to Puerto Rico which would otherwise have been inapplicable to that Commonwealth it will do so in clear and explicit terms. Id. at 38.

Using this line of precedent, the court below stated:

> [B]ecause jury trials for civil actions do not exist in Puerto Rico, because that is foreign to our civil juridical tradition, because neither our laws nor our Rules of Civil Procedure provide for it, and because our legislation provides for civil suits to be tried before the court without a jury, the provision of the Jones Act . . . is locally inapplicable to Puerto Rico . . . (Appendix to Petition at pp. 24-25).

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW AS PETITIONER HAS NOT BEEN DENIED ANY OF HIS CONSTITUTIONAL RIGHTS AS A UNITED STATES CITIZEN

Petitioner suggests there has been a denial of his constitutional right which raises a question of federal law. As previously pointed out, there is no federal question involved as the decisions below clearly indicate. Petitioner has endeavored to convert the statutory provisions of the Jones Act into constitutional maritime rights. This is clearly erroneous.

The Jones Act traces its origin to the Seaman's Act of 1915. As originally enacted, that Act was part

of legislation the declared purpose of which was "to promote the welfare of American seamen." It provided that in suits to recover damages for personal injuries the common law "fellow servant rule" would not apply. In *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 384 (1918), this Court treated it as part of the maritime law, but held it did not disclose the purpose "to impose on shipowners the measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore." After that restrictive decision, the Seaman's Act was reenacted in 1920 as the Jones Act with the expressed object to provide for the promotion and maintenance of the American merchant marine. In its current form, the Act makes applicable to personal injuries suffered by seamen in the course of their employment all the rights granted by the Federal Employers' Liability Act, 45 U.S.C. § 51-60. The rights granted by the reenactment in 1920 included the right to bring the actions for damages before a jury. The history of the Jones Act indicates that Congress sought to put merchant seamen on a par with other claimants in negligence actions. Common law actions in negligence have been traditionally brought before a jury in the United States, and the provision in the Jones Act providing the right to trial by jury so reflects. However, the right to trial by jury in civil litigation in Puerto Rico is unknown. To provide the right to trial by jury to seamen in the United States is to equalize; to provide the right to seamen in the Puerto Rican court system would be to provide an extra-privilege not enjoyed by other civil litigants. The ability of states to determine procedural rules for trial by jury was discussed by this Court

in *Dice* v. *Akron, C. & Y. R. Co.*, 342 U.S. 359 (1951):

> It is contended that since a state may consistently with the federal constitution provide for a trial of cases under the Act [FELA] by a non-unanimous verdict, *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211, Ohio may lawfully eliminate trial by jury as to one phase of fraud while allowing jury trial as to all other issues raised. The *Bombolis* case might be more in point had Ohio abolished trial by jury in all negligence cases including those arising under the federal Act. But Ohio has not done this. It has provided jury trials for cases arising under the federal Act but seeks to single out one phase of the question of fraudulent releases for determination by a judge rather than by a jury. Id. at 363.

By its very language, this Court points out that a state which had abolished trial by jury in all negligence cases including those arising under the federal Act, could probably do so. As previously mentioned, insofar as the federal jurisdiction is concerned, this Court has held that the right to trial by jury is part of the remedy granted by the Jones Act. *Jacob* v. *New York*, *supra*. However, it seems incongruous to extend this federal jurisdiction rule to the courts of Puerto Rico, which do not have the trial by jury for civil actions. By its actions in approving the constitution chosen by the people of Puerto Rico, Congress has recognized the existence of the Civil Code in Puerto Rico with its inherent provision providing trial for negligence matters before a judge alone. As was stated in *United States* v. *Rios*, 140 F. Supp. 376 (1959):

> [S]uch local transactions or conduct ought to be dealt with by the Commonwealth under its own

> constitution and internal laws and it would be frustrative of the very purpose and intention of Congress in establishing the new status to hold now that said statute may accomplish by indirection the very thing Congress expressly wanted to leave in the hands of the Commonwealth government. Id. at 383.

The opinion of the Supreme Court of Puerto Rico clearly defined the distinction between statutory provision for trial by jury under the Jones Act and constitutional rights guaranteed by the Seventh Amendment. As that Court pointed out:

> In the United States the trial by jury in civil actions of maritime jurisdiction was never known during the time of the colonies nor under the Constitution. Already in *Waring v. Clarke* . . . it was concluded that what the Seventh Amendment guarantees is that in suits at common law the trial by jury should be "preserved" and that said Amendment is not applicable to suits in admiralty. There being no trial by jury in admiralty there was nothing to preserve in regard to the trial by jury in said maritime law. (Appendix to Petition, pp. 18-19.)

Petitioner's request for trial by jury was clearly based on statutory law. This statute has been demonstrated to be clearly "inapplicable" to Puerto Rico. Petitioner "availed himself of his right to elect the forum (admiralty, Federal, or State) . . ." (See Petition at p. 8.).

By electing the Commonwealth (State) forum, this Puerto Rican petitioner, represented by Puerto Rican counsel, deliberately chose to bring action in the Superior Court of Puerto Rico fully aware that the Civil Rules of that court made no provision for trial

by jury in negligence cases, and that the physical arrangements of that court were such that no facilities for accommodating a jury existed. They were completely aware that had they elected to bring action in the federal court in Puerto Rico, trial by jury would have been automatically granted.

This Court has said it will not undertake to decide a question of the constitutionality of state action unless no alternative is available. No substantial right of petitioner is involved since trial by jury is available in the federal court in Puerto Rico and only by the voluntary election of action in the Superior Court of Puerto Rico has petitioner created this issue.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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March 10, 1971